

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID HOLLETT,

Plaintiff,

v.

MIKE WINWARD, *et al.*,

Defendants.

Case No. 3:22-cv-00329-MMD-CSD

ORDER

Pro se Plaintiff David Hollett, who is currently incarcerated at High Desert State Prison, brings an Eighth Amendment failure to protect action under 42 U.S.C. § 1983 against Robert Dugan and James Underwood (“Defendants”).¹ (ECF Nos. 1-1, 6.) Defendants filed a motion for summary judgment. (ECF No. 31 (“Motion”).) Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Craig S. Denney, recommending that the Motion be granted. (ECF No. 34.) Hollett has not filed an objection to the R&R. The Court will adopt the R&R in full.

Because there is no objection, the Court need not conduct *de novo* review, and is satisfied that Judge Denney did not clearly err. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”).

Defendants first challenge Hollett’s claims as not yet exhausted. The Prison Litigation Reform Act (“PLRA”) provides that inmates cannot bring actions challenging prison conditions under federal law “until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Proper exhaustion requires that a grievant “use all

¹Named defendant Mike Winward was dismissed from this action with prejudice during the screening of Hollett’s complaint. (ECF No. 5.)

1 steps the prison holds out, enabling the prison to reach the merits of the issue.” *Griffin v.*
2 *Arpaio*, 557 F.3d 1117, 1119 (9th Cir. 2009). In Nevada, inmates must advance through
3 each available level of grievance processing under Nevada Department of Corrections’
4 Administrative Regulation (AR) 740. (ECF No. 31-4.) *See also* NRS § 209.243.

5 This action arises from Hollett’s allegations that a cellmate of his “extorted,
6 threatened, robbed, and physically abused” him and that Defendants failed to protect him
7 from this abuse by giving them separate living arrangements. (ECF No. 6 at 2-3.)
8 Defendants submitted Hollett’s entire inmate grievance history, and there is no evidence
9 that Hollett ever filed a grievance about abuse from his cellmate Winward or any other
10 grievance against Dugan or Underwood. (ECF No. 31-3.) In the six months since
11 Defendants submitted Hollett’s grievance history with their Motion, Hollett has not filed a
12 response to show that he did file such a grievance or was unable to file a grievance. Thus,
13 there is no dispute as to this material fact. *See Frlekin v. Apple, Inc.*, 979 F.3d 639, 643
14 (9th Cir. 2020) (“A grant of summary judgment is appropriate when there is no genuine
15 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”).
16 The Court is satisfied that Judge Denney did not clearly err in finding that Hollett did not
17 exhaust the AR 740 grievance procedures or in recommending that the Court grant
18 summary judgment in Defendants’ favor on the grounds of exhaustion.

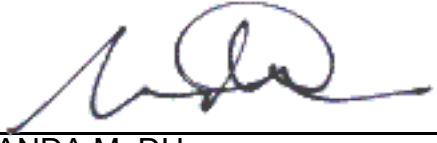
19 It is therefore ordered that Judge Denney’s R&R (ECF No. 34) is accepted and
20 adopted in full as to Defendants’ motion for summary judgment (ECF No. 31).

21 It is further ordered that Defendants’ motion for summary judgment (ECF No. 31)
22 is granted.

23 The Clerk of Court is directed to enter judgment accordingly and close this case.

24 DATED THIS 16th Day of May 2024.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE